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McConnell,
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MEMORANDUM

SUBJECT: Senator Schweiker's Proposed Amendment
to Defense Appropriations Bill

Senator Schweiker has indicated his intention to introduce, in the Appropriations Committee, an amendment to each major appropriations bill, regulating unvouchered spending by Federal agencies. The text of his amendment is:

"Sec. . No funds appropriated by this Act may be expended--

(1) pursuant to a certification of an officer or employee of the United States unless--

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made, or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such an audit."

Section 8(b) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j) authorizes the Director of Central Intelligence to expend certain funds on his certification alone, and shields these expenditures from outside review. Section 8(b) reads:

"The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

Under Mr. Schweiker's proposed amendment, no appropriated funds may be expended "unless the expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such an audit." Although the section 8(b) authority clearly exempts expenditures for objects of a confidential, extraordinary, or emergency nature from all additional review, the section does not expressly exempt these expenditures from an audit by GAO. The language "specifically exempt by law from such an audit" in section (2) of the amendment could be interpreted to require an express exemption of a GAO audit by name. To exclude the possibility of such an interpretation, if the amendment is added to the Fiscal 1977 Defense Appropriations bill, the word "specifically" should be dropped from clause (2). This deletion would defer any legislative changes relating to GAO audit of funds expended under the Director's authority until the House and Senate Select Committees complete their thorough consideration of whether and the extent to which GAO should audit CIA.

Following are substantive arguments in support of the continuation of the Director's certification authority:

(1) The section 8(b) authority is essential to the Director's ability to protect Intelligence Sources and Methods from unauthorized disclosure, his statutory responsibility under 50 U.S.C. 403. The confidential funds certification authority is used only for activities of a confidential, extraordinary, or emergency nature. Payments to foreigners in furtherance of our foreign intelligence mission are representative of expenditures under this authority. Exposure of the relationship of these people with CIA could seriously endanger them. We have always been able to assure those who assist us that no one outside CIA will have access to their records, and that only the absolute minimum number of Agency employees will know of the relationship. The revelation that non-Agency auditors could gain access to their names or records might well discourage many of these people from future cooperation, and would certainly affect the assurance we could, in good faith, provide.

(2) The responsibility inherent in the grant of authority to the Director to certify the expenditure of funds without regard to otherwise applicable laws and regulations has from the beginning

prompted Agency management to insist upon rigorous internal procedures and audits. Agency accounting systems procedures, requiring administrative approval and finance officer certification of all financial transactions, are based upon principles and standards established by GAO. CIA accounts and operations are thoroughly scrutinized by an internal Audit Staff, which reports to the Director through the Inspector General. The Audit Staff observes the same audit principles and standards as the GAO. A recent examination and evaluation of the Agency's internal audit practices and policies by a respected company of Certified Public Accountants concluded, "the overall internal audit effort in CIA is adequate to safeguard Agency assets and ensure administrative compliance with law and regulation."

(3) Past Comptrollers General have acknowledged the necessity of the section 8(b) authority. For example, Lindsay C. Warren, Comptroller General at the time the CIA Act was before Congress, wrote that while this authority provided "for the granting of much wider authority than I would ordinarily recommend for Government agencies, generally, the purposes sought to be obtained by the establishment of the Central Intelligence Agency are believed to be of such paramount importance as to justify the extraordinary measures proposed therein." He further stated that the "necessity for secrecy in such matters is apparent and the Congress apparently recognized this fully in that it provided in Section 102(d)(3) of Public Law 253, that the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure." Under these conditions, he stated, "I do not feel called upon to object to the proposals advanced ..."